

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1338

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES RELFORD, FRANKLIN, DAVIS, HARTZLER, SEIGFREID,
RANSALL, SHIELDS (Co-sponsors) AND KREIDER.

Pre-filed December 27, 2001, and 1000 copies ordered printed.

Read 1st time January 9, 2002.

Read 2nd time January 10, 2002, and referred to the Committee on Education - Elementary and Secondary, January 15, 2002.

Reported from the Committee on Education - Elementary and Secondary, January 21, 2002, with recommendation that the bill Do

Pass.

Taken up for Perfection January 24, 2002. Bill ordered Perfected and printed.

TED WEDEL, Chief Clerk

3349L.01P

AN ACT

To repeal section 168.071, RSMo, and to enact in lieu thereof one new section relating to teachers' licenses.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 168.071, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 168.071, to read as follows:

168.071. 1. [The Missouri state board of education may refuse to issue or renew, or may suspend or revoke a certificate of license to teach upon satisfactory proof of incompetency, cruelty, immorality, drunkenness, neglect of duty, or the annulling of a written contract for reasons other than election to the general assembly, with the local board of education without the consent of the majority of the members of the board which is a party to the contract. Charges may be filed by any school district or, at the request of the school district, by the office of the attorney general if the school district has been identified as financially stressed pursuant to section 161.520, RSMo. If the underlying conduct or actions which are the basis for charges filed under this subsection are also the subject of a pending criminal charge against the person holding such certificate, and that person requests in writing a delayed hearing on advice of counsel under the fifth amendment of the Constitution of the United States, no hearing shall be

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

12 held until after final disposition of the criminal charge.

13 2. The state board of education may refuse to issue or renew, or may, upon hearing,
14 suspend or revoke a certificate of license to teach if a certificate holder or applicant for a
15 certificate has pleaded to or been found guilty of a felony or crime involving moral turpitude
16 under the laws of this state or any other state or of the United States, or any other country,
17 whether or not the sentence is imposed.

18 3. The certificate of license to teach shall be revoked or, in the case of an applicant, a
19 certificate shall not be issued, if the certificate holder or applicant has pleaded guilty to or been
20 found guilty of any of the following offenses established pursuant to Missouri law or offenses
21 of a similar nature established under the laws of any other state or of the United States, or any
22 other country, whether or not the sentence is imposed:

23 (1) Any dangerous felony as defined in section 556.061, RSMo, or murder in the first
24 degree;

25 (2) Any of the following sexual offenses: rape; statutory rape in the first degree;
26 statutory rape in the second degree; sexual assault; forcible sodomy; statutory sodomy in the first
27 degree; statutory sodomy in the second degree; child molestation in the first degree; child
28 molestation in the second degree; deviate sexual assault; sexual misconduct involving a child;
29 sexual misconduct in the first degree; or sexual abuse;

30 (3) Any of the following offenses against the family and related offenses: incest;
31 abandonment of child in the first degree; abandonment of child in the second degree;
32 endangering the welfare of a child in the first degree; abuse of a child; child used in a sexual
33 performance; promoting sexual performance by a child; or trafficking in children; and

34 (4) Any of the following offenses involving child pornography and related offenses:
35 promoting obscenity in the first degree; promoting child pornography in the first degree;
36 promoting obscenity in the second degree when the penalty is enhanced to a class D felony;
37 promoting child pornography in the second degree; possession of child pornography; furnishing
38 pornographic materials to minors; coercing acceptance of obscene material; or sale or rental to
39 persons under seventeen.

40 4. The certificate holder whose certificate was revoked pursuant to subsection 3 of this
41 section may appeal such revocation to the state board of education. The certificate holder whose
42 certificate has been revoked pursuant to subsection 3 of this section must notify the
43 commissioner of education of the intent to appeal by advising the commissioner within thirty
44 days of the certificate holder's plea of guilty or finding of guilt of the intent to appeal. Failure
45 of the certificate holder to notify the commissioner of the intent to appeal waives all rights to
46 appeal said revocation. Upon notice of the certificate holder's intent to appeal, an appeal hearing
47 shall be held by a hearing officer designated by the commissioner of education, with the final

48 decision made by the state board of education, based upon the record of that hearing. The
49 certificate holder shall be given not less than thirty days' notice of the hearing, and an opportunity
50 to be heard by the hearing officer, together with witnesses. In those cases where the plea of guilty
51 to or finding of guilt of any of the offenses listed in subsection 3 of this section involve a minor
52 child, testimony from the minor child involved in the complaint shall not be required. The
53 hearing officer shall accept into the record the transcript of any testimony of a child involved in
54 such offense if such testimony was admitted in any court hearing. Subsection 6 of this section
55 shall apply to any final decision made by the state board of education pursuant to this subsection.

56 5. The charges filed with the state board of education under this section shall be in
57 writing and plainly and fully specify the basis for the charges. The charges shall be signed by
58 the chief administrative officer of the district or by the president of the board of education when
59 so authorized by a majority of the board. The certificate holder shall be given not less than thirty
60 days' notice of the hearing, and an opportunity to be heard, together with witnesses.

61 6. The certificate holder may appeal to the circuit court at any time within thirty days
62 after receipt of the final decision of the state board of education. The appeal shall be heard with
63 a jury at the option of either the certificate holder or the party filing the charges, and shall be tried
64 de novo, affirming or denying the action of the state board of education. Costs shall be taxed
65 against the appellant if the judgment of the state board of education is affirmed. In those cases
66 where the charges allege immorality by the certificate holder involving a minor child, such case
67 shall be heard by the court without a jury and any testimony from the minor child involved in the
68 complaint shall be taken directly from the hearing record taken on behalf of the state board of
69 education.

70 7. The issuance of a certificate of license to teach to an individual who has been
71 convicted of a felony or crime involving moral turpitude shall be issued only upon motion of the
72 state board of education adopted by a unanimous affirmative vote of those members present and
73 voting.] **The state board of education may refuse to issue or renew a certificate, or may,
74 upon hearing, discipline the holder of a certificate of license to teach for the following
75 causes:**

76 **(1) A certificate holder or applicant for a certificate has pleaded to or been found**
77 **guilty of a felony or crime involving moral turpitude under the laws of this state, any other**
78 **state, of the United States, or any other country, whether or not sentence is imposed;**

79 **(2) The certification was obtained through use of fraud, deception,**
80 **misrepresentation or bribery;**

81 **(3) There is evidence of incompetence, immorality, or neglect of duty by the**
82 **certificate holder;**

83 **(4) A certificate holder has been subject to disciplinary action relating to**

84 certification issued by another state, territory, federal agency, or country upon grounds
85 for which discipline is authorized in this section; or

86 (5) If charges are filed by the local board of education, based upon the annulling
87 of a written contract with the local board of education, for reasons other than election to
88 the general assembly, without the consent of the majority of the members of the board that
89 is a party to the contract.

90 2. A public school district may file charges seeking the discipline of a holder of a
91 certificate of license to teach based upon any cause or combination of causes outlined in
92 subsection 1 of this section, including annulment of a written contract. Charges shall be
93 in writing, specify the basis for the charges, and be signed by the chief administrative
94 officer of the district, or by the president of the board of education as authorized by a
95 majority of the board of education. The board of education may also petition the office of
96 the attorney general to file charges on behalf of the school district for any cause other than
97 annulment of contract, with acceptance of the petition at the discretion of the attorney
98 general.

99 3. The department of elementary and secondary education may file charges seeking
100 the discipline of a holder of a certificate of license to teach based upon any cause or
101 combination of causes outlined in subsection 1 of this section, other than annulment of
102 contract. Charges shall be in writing, specify the basis for the charges, and be signed by
103 legal counsel representing the department of elementary and secondary education.

104 4. If the underlying conduct or actions which are the basis for charges filed
105 pursuant to this section are also the subject of a pending criminal charge against the
106 person holding such certificate, the certificate holder may request, in writing, a delayed
107 hearing on advice of counsel under the fifth amendment of the Constitution of the United
108 States. Based upon such a request, no hearing shall be held until after a trial has been
109 completed on this criminal charge.

110 5. The certificate holder shall be given not less than thirty days' notice of any
111 hearing held pursuant to this section.

112 6. Other provisions of this section notwithstanding, the certificate of license to teach
113 shall be revoked or, in the case of an applicant, a certificate shall not be issued, if the
114 certificate holder or applicant has pleaded guilty to or been found guilty of any of the
115 following offenses established pursuant to Missouri law or offenses of a similar nature
116 established under the laws of any other state or of the United States, or any other country,
117 whether or not the sentence is imposed:

118 (1) Any dangerous felony as defined in section 556.061, RSMo, or murder in the
119 first degree;

120 **(2) Any of the following sexual offenses: rape; statutory rape in the first degree;**
121 **statutory rape in the second degree; sexual assault; forcible sodomy; statutory sodomy in**
122 **the first degree; statutory sodomy in the second degree; child molestation in the first**
123 **degree; child molestation in the second degree; deviate sexual assault; sexual misconduct**
124 **involving a child; sexual misconduct in the first degree; or sexual abuse;**

125 **(3) Any of the following offenses against the family and related offenses: incest;**
126 **abandonment of child in the first degree; abandonment of child in the second degree;**
127 **endangering the welfare of a child in the first degree; abuse of a child; child used in a**
128 **sexual performance; promoting sexual performance by a child; or trafficking in children;**
129 **and**

130 **(4) Any of the following offenses involving child pornography and related offenses:**
131 **promoting obscenity in the first degree; promoting obscenity in the second degree when the**
132 **penalty is enhanced to a class D felony; promoting child pornography in the first degree;**
133 **promoting child pornography in the second degree; possession of child pornography in the**
134 **first degree; possession of child pornography in the second degree; furnishing child**
135 **pornography to a minor; furnishing pornographic materials to minors; or coercing**
136 **acceptance of obscene material.**

137 **7. The certificate holder whose certificate was revoked pursuant to subsection 6 of**
138 **this section may appeal such revocation to the state board of education. Notice of this**
139 **appeal must be received by the commissioner of education within ninety days of notice of**
140 **revocation pursuant to this subsection. Failure of the certificate holder to notify the**
141 **commissioner of the intent to appeal waives all rights to appeal the revocation. Upon**
142 **notice of the certificate holder's intent to appeal, an appeal hearing shall be held by a**
143 **hearing officer designated by the commissioner of education, with the final decision made**
144 **by the state board of education, based upon the record of that hearing. The certificate**
145 **holder shall be given not less than thirty days' notice of the hearing, and an opportunity**
146 **to be heard by the hearing officer, together with witnesses.**

147 **8. In the case of any certificate holder who has surrendered or failed to renew his**
148 **or her certificate of license to teach, the state board of education may refuse to issue or**
149 **renew, or may suspend or revoke, such certificate for any of the reasons contained in this**
150 **section.**

151 **9. In those cases where the charges filed pursuant to this section are based upon an**
152 **allegation of misconduct involving a minor child, the hearing officer may accept into the**
153 **record the sworn testimony of the minor child relating to the misconduct received in any**
154 **court or administrative hearing.**

155 **10. Hearings, appeals or other matters involving certificate holders, licensees or**

156 applicants pursuant to this section may be informally resolved by consent agreement or
157 agreed settlement or voluntary surrender of the certificate of license pursuant to the rules
158 promulgated by the state board of education.

159 **11. The final decision of the state board of education is subject to judicial review**
160 **pursuant to sections 536.100 to 536.140, RSMo.**

161 **12. A certificate of license to teach to an individual who has been convicted of a**
162 **felony or crime involving moral turpitude, whether or not sentence is imposed, shall be**
163 **issued only upon motion of the state board of education adopted by a unanimous**
164 **affirmative vote of those members present and voting.**